STATE OF CONNECTICUT
OFFICE OF STATE ETHICS
Phone (860) 263-2400 Fax (860) 263-2402
18-20 Trinity Street – Hartford, Connecticut 06106-1660
www.ct.gov/ethics
An Equal Opportunity employer

# Draft Advisory Opinion No. 2014-1

January 24, 2014

**Question Presented:** **The petitioner asks whether, under General Statutes § 1-101nn (b),[1] a firm may serve as a subcontractor in the *construction phase* of a State project, even though it served as a sub-consultant in the *design phase* of the same project, given that it did not contract with the State in either phase.**

**Brief Answer:** **Given the plain and unambiguous text of § 1-101nn (b), we must conclude that, because the firm did not contract with the State in the design phase, it may serve as a subcontractor in the construction phase, so long as it is not "associated" with firm that did, in fact, contract with the State in the design phase.**

At its January 2014 regular meeting, the Citizen's Ethics Advisory Board granted the petition for an advisory opinion

[1]Section 1-101nn (b) reads: "No person with whom a state agency, board, commission or institution or quasi-public agency has contracted to provide consulting services to plan specifications for any contract and no business with which the person is associated may serve as a consultant to any person seeking to obtain such contract, serve as a contractor for such contract or serve as a subcontractor or consultant to the person awarded such contract."

submitted by Tom Wood, project manager for The Middlesex Corporation. The Board now issues this advisory opinion, which interprets the Codes of Ethics,[2] is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based on the facts provided by the petitioner.

## Facts

The petitioner has provided the following pertinent facts:

> The Middlesex Corporation (TMC) is in receipt of a letter from the Department of Transportation (DOT) dated December 5, 2013 requesting that TMC contact the Connecticut Office of State Ethics regarding a potential conflict of interest concern between GM2 Associates and the State of Connecticut . . . . The particular potential conflict of interest is not specifically stated in the letter from the State but references an engagement between TMC and GM2 Associates.
>
> TMC is . . . proposing to subcontract either directly or indirectly with GM2 Associates, Inc. (GM2) to perform certain temporary work design on State Project 92-522, Reconstruction of I-95 over the West River in West Haven and New Haven, CT on which [TMC] is the prime Contractor for the construction phase of the Contract. In a previous phase of the project (design phase), GM2 performed sub-consultant conceptual work for Parsons Brinckerhoff (PB) for the demolition and erection of the bridge. PB is the prime engineering design firm and is the Designer of Record for the project.
>
> The subcontract work GM2 will perform for TMC includes the structural design of temporary works including a temporary working trestle. The actual final design of temporary works is the responsibility of the Contractor and is not included in the contract documents. It should also be noted that proposed

[2]Chapter 10 of the General Statutes.

> design of the temporary works differs completely than that of the conceptual design. TMC has ownership of a predesigned steel trestle used on previous CT DOT Projects that at the time of bid was considered to be available for this project. GM2 will be providing project specific changes based on loads and modifications to the steel trestle. Any knowledge that GM2 could have acquired during the conceptual phase would therefore be of no benefit to the specific requirements of TMC.
>
> It should be noted that GM2 is not a subsidiary of PB or TMC. GM2 did not contract directly with the State in the design phase of this project and will not contract with the State or PB in the construction phase of this project.
>
> It is our understanding that Public Act 05-287 does not preclude sub-consultants (i.e., GM2) of the firm that contracted with the State (i.e., PB) from participating in later phases of a project. . . .

To better visualize the contractual relationships between the various entities, we put them in chart form:

| **Design Phase** | **Construction Phase** |
|---|---|
| Department of Transportation | Department of Transportation |
| ↓(contract) | ↓(contract) |
| Parsons Brinckerhoff<br>(prime engineering design firm) | The Middlesex Corporation<br>(prime contractor) |
| ↓(contract) | ↓(contract) |
| GM2<br>(sub-consultant) | GM2<br>(subcontractor) |

## Analysis

The provision at issue here, General Statutes § 1-101nn (b), is

found in part IV of the Codes of Ethics—titled "Ethical Considerations Concerning Bidding and State Contracts"—and it reads, in relevant part, as follows:

> No person *with whom a state agency . . . has contracted* to provide consulting services to plan specifications for any contract *and no business with which the person is associated* may serve as a consultant to any person seeking to obtain such contract, serve as a contractor for such contract or serve as a subcontractor or consultant to the person awarded such contract.[3]

Paraphrasing the above-quoted language, the questions in this case are twofold:

(1) In the design phase, was GM2 a "person with whom a state agency [i.e., the DOT] . . . contracted to provide consulting services to plan specifications for" the construction-phase contract?

(2) If not, then is GM2 a "business with which th[at] person is associated"?

If we answer yes to either question, then § 1-101nn (b) bars GM2 from, among other things, "serv[ing] as a subcontractor . . . to the person awarded" the construction-phase contract, namely, The Middlesex Corporation.

To answer those questions, we must interpret § 1-101nn (b), the "fundamental objective" being to "ascertain and give effect to the apparent intent of the legislature. . . ."[4] General Statutes § 1-2z directs us to consider, first, the text of § 1-101nn (b) and how it relates to other statutes. If its meaning is "plain and unambiguous and does not yield absurd or unworkable results," *then our analysis must end*; that is, we may not consider "extratextual evidence of the meaning of the statute . . . ."[5] "The test to determine ambiguity is

---

[3](Emphasis added.)

[4](Internal quotation marks omitted.) *State* v. *Brown*, 310 Conn. 693, 702 (2013).

[5]General Statutes § 1-2z.

whether the statute, when read in context, is susceptible to more than one reasonable interpretation."[6]

With that said, we turn to the first question, which is this: In the design phase, was GM2 a "*person with whom a state agency [i.e., the DOT] . . . contracted* to provide consulting services to plan specifications for" the construction-phase contract?[7] As for the term "person," General Statutes § 1-101mm (4)—located in the definition section of part IV—points us to General Statutes § 1-79 (9), which defines "person" to include, among other things, a "corporation." As noted in the "Facts" section, GM2—whose full name is "GM2 Associates, *Inc.*"—is a corporation and, as such, is a "person" under § 1-79 (9) and, hence, § 1-101nn (b).

We must now address whether, as a "person" under § 1-101nn (b), GM2 is one "with whom a state agency . . . *contracted* . . . ."[8] Nowhere does § 1-101nn (b) suggest that the word "contracted" was meant to have "anything other than its ordinary meaning," so "we may . . . look to the meaning of the word as commonly expressed . . . in dictionaries."[9] As used here, "contracted" is the past tense of the verb "to contract," which means "to make a contract,"[10] that is, "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law."[11] *Nothing* before us even remotely indicates the existence of such an agreement between GM2 and the DOT. In fact, the petitioner asserts, "GM2 did not contract directly with the [DOT] in the design phase . . . ." Rather, the "person with whom the DOT . . . contracted" in the design phase was Parsons Brinckerhoff, the consulting engineer, which, in turn, contracted with GM2 to serve as a sub-consultant.

Not only that, had the legislature wanted to apply the ban in § 1-101nn (b) to a design-phase sub-consultant with no contractual

---

[6](Internal quotation marks omitted.) *State* v. *Brown*, supra, 702.

[7](Emphasis added.) General Statutes § 1-101nn (b).

[8](Emphasis added.)

[9]*State* v. *Woods*, 234 Conn. 301, 309 (1995).

[10]Merriam-Webster Dictionary Online, available at http:// merriamwebster.com/dictionary (last visited January 13, 2014).

[11]Black's Law Dictionary (8th ed. 2004); see also Merriam-Webster Dictionary Online, available at http:// merriamwebster.com/dictionary (last visited January 13, 2014) (defining "contract" as "a binding agreement between two or more persons or parties; especially: one legally enforceable").

relationship with a state agency, it knew how to do so. Indeed, in the second half of its single sentence, § 1-101nn (b) actually speaks of sub-consultants (and subcontractors). That is, it prohibits a "person with whom a state agency . . . contracted" in the design phase from serving as a "*subcontractor or consultant to the person awarded*" the construction-phase contract. (A consultant to the person awarded such contract is a sub-consultant.) Thus, had the legislature wanted to subject sub-consultants and subcontractors to the ban in § 1-101nn (b), it would have inserted them, not just in the sentence's second half, but also in its first, like so:

> No person with whom a state agency . . . has contracted to provide consulting services to plan specifications for any contract, no person that served as a subcontractor or consultant to the person awarded the consulting-services contract, and no business with which the person is associated may serve as a consultant to any person seeking to obtain such contract, serve as a contractor for such contract or serve as a subcontractor or consultant to the person awarded such contract.

But the legislature chose not to do so, and its "use of different terms within the same sentence . . . *plainly* implies that different meanings were intended."[12]

We must conclude, then, that § 1-101nn (b), as applied here, is plain and unambiguous, as it is susceptible to but one reasonable interpretation: that GM2—a design-phase sub-consultant with no contractual relationship with the DOT— is not a "person with whom [the DOT] . . . contracted to provide consulting services to plan specifications for" the construction-phase contract.[13] To conclude

---

[12](Emphasis added.) *Hinchliffe* v. *American Motors Corp.*, 184 Conn. 607, 613 (1981); see also *C. R. Klewin Northeast, LLC* v. *State*, 299 Conn. 167, 177 (2010) ("[t]he use of the different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings" [internal quotation marks omitted]).

[13]We also conclude that this interpretation does not yield an "absurd or unworkable result[]," for purposes of § 1-2z. The result here is certainly not "unworkable," meaning "not capable of being put into practice successfully"; (internal quotation marks omitted) *Rivers* v. *New Britain*, 288 Conn. 1, 17 (2008); nor do we believe it is "absurd," "meaning . . .

otherwise would require us to "indulge in the license of striking out and inserting and remodeling with the view of making the letter express an intent which the statute in its native form does not express."[14] That, we may not do.

Having concluded that the "person with whom [the DOT] . . . contracted" in the design phase was not GM2, but rather Parsons Brinckerhoff, we turn to the second question mentioned above: whether GM2 is a "business with which the person [i.e., Parsons Brinckerhoff] is associated," within the meaning of § 1-101nn (b). If so, then § 1-101nn (b) prohibits GM2 from, among other things, "serv[ing] as a subcontractor . . . to the person awarded" the construction-phase contract.

As for the term "business with which the person is associated," General Statutes § 1-101mm (1)—located in part IV's definition section—defines it, in relevant part, as follows:

> Any . . . entity through which business for-profit . . . is conducted in which the person . . . is a director, officer, owner, limited or general partner, beneficiary of a trust or holder of stock constituting five per cent or more of the total outstanding stock of any class . . . .

As applied here, GM2 is the "entity through which business for-

---

foolish or bizarre, an end that could not have been contemplated by a reasonable actor." *Maynard* v. *GEICO General Insurance Co.*, Superior Court, judicial district of New Haven, Docket No. CV-06-5004144-S (March 2, 2009). An example of an "absurd" result comes from *Sams* v. *Dept. of Environmental Protection*, 308 Conn. 359, 380 n.18 (2013): "We decline to conclude that § 22a-361 requires the department [of environmental protection] to prove that the tide on any given day is not influenced, even to the slightest degree, by a storm occurring hundreds of miles away in the Atlantic Ocean. Taken to its logical conclusion, the plaintiffs' interpretation of the statute would force the department to prove that the observed tide on any given day was not influenced at all by a storm or strong winds occurring anywhere in the world. Clearly, the legislature did not intend such an absurd result."

[14](Internal quotation marks omitted.) *Bysiewicz* v. *DiNardo*, 298 Conn. 748, 801 (2010); see also *Doe* v. *Manson*, 183 Conn. 183, 188 (1981) ("[i]t . . . is not our function to attempt to improve upon the actions of the legislature by reading into a statute what is clearly not there" [internal quotation marks omitted]).

profit . . . is conducted," Parsons Brinckerhoff is the "person," and the issue is whether the latter has a statutorily listed affiliation (e.g., owner, limited or general partner, etc.) with the former. We cannot make that determination, for all we know is that "GM2 is not a subsidiary of PB . . . ." But suffice it to say, if Parsons Brinckerhoff is not affiliated with GM2 in any of the statutorily listed capacities, then GM2 is not a business with which Parsons Brinkerhoff is "associated," within the meaning of both §§ 1-101mm (1) and § 1-101nn (b). And if that is the case, then § 1-101nn (b) does not prohibit GM2 from serving as a subcontractor in the construction phase of the DOT project.

## Conclusion

Given the plain and unambiguous text of § 1-101nn (b), we must conclude that, because GM2 did not contract with the DOT in the design phase, it may serve as a subcontractor in the construction phase, so long as it is not "associated" with firm that did, in fact, contract with the DOT in the design phase.

By order of the Board,

Dated_____ _____

Chairperson